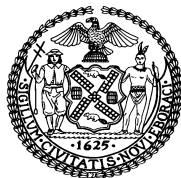


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## **THE COUNCIL**

Briefing Paper and Report of the Governmental Affairs Division  
Marcel Van Ooyen, Deputy Chief of Staff

### **COMMITTEE ON PUBLIC SAFETY**

Hon. Peter F. Vallone Jr., Chair

February 23, 2004

**INT. NO. 142:** By Council Members Reed, Lopez, Perkins, Jennings, Martinez, Rivera, Sanders Jr., Vann, Liu, Moskowitz, Monserrate, Seabrook and Clarke

**TITLE:** A local law to amend the administrative code of the city of New York, in relation to prohibiting the use of racial or ethnic profiling by members of the police department and other law enforcement agencies.

**OVERSIGHT:** The NYPD's Policies and Procedures Regarding Racial Profiling

## **I. Stop, Question and Frisk and Racial Profiling: Relevant Law and NYPD Policy**

Criminal Procedure Law §140.50, also known as the “stop and frisk act,” indicates that a police officer may stop a person in a public place “when he reasonably suspects that such person is committing, has committed or is about to commit either (a) a felony or (b) a misdemeanor defined in the penal law, and may demand of him his name, address and an explanation of his conduct.” Criminal Procedure Law §140.50 also indicates that if, upon stopping a person, the officer “reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons.” In addition, a police officer may forcibly stop a vehicle when he has reasonable suspicion that the owner, operator or occupant has committed a violation of the Vehicle and Traffic Law, or when an occupant has committed, is committing or is about to commit a violation of the law, or pursuant to a non-arbitrary road block procedure.<sup>1</sup>

Mirroring these state statutes, the New York City Police Department (NYPD) Patrol Guide defines a stop as the “temporar[ely] det[ention] of a person for questioning,” a frisk as a “running of the hands over the clothing, feeling for a weapon,” and a “search” as the placing of the “hands inside [the] pocket or other interior parts of clothing to determine if [the] object felt is a weapon.”<sup>2</sup>

To assist police officers in determining whether reasonable suspicion exists to stop an individual, the Patrol Guide advises officers to look for factors such as the demeanor of the suspect, the gait and manner of the suspect, any information received

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<sup>1</sup> See, People v Ingle, 36 NY2d 413 (1975); People v Sobotker, 43 NY2d 559 (1978); People v Chisholm, 180 AD2d 744 (2d Dept. 1992).

<sup>2</sup> Patrol Guide §212-11

from third parties, and the person's proximity to the scene of a crime.<sup>3</sup> The NYPD also advises its officers that an "unlimited number of varied factors ...might indicate criminal activity. Alone or in combination, these factors will lead to no suspicion, mere suspicion, reasonable suspicion or probable cause."<sup>4</sup>

In making this determination of whether reasonable suspicion exists to stop an individual, however, an officer may not engage in racial profiling. Racial profiling, as defined in NYPD Operations Order 11, is "the use of race, color, ethnicity or national origin as the determinative factor for initiating police action." The Operations Order, a copy of which is attached as Exhibit A, goes on to state that the NYPD "is committed both to the impartial enforcement of law and the protection of Constitutional rights...All police-initiated enforcement actions...will be based on the standards required by the Fourth Amendment of the U.S. Constitution or other applicable law. Officers must be able to articulate the factors which led them to take enforcement action, in particular those factors leading to reasonable suspicion for a stop and question, or probable cause for an arrest. ***Officers are also reminded that the use of characteristics such as religion, age, gender, gender identity, or sexual orientation as the determinative factor for taking police action is prohibited.***"<sup>5</sup>

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<sup>3</sup> Patrol Guide §212-11

<sup>4</sup> "Street Encounters," NYPD Legal Bureau, p. 10. Attempting to define the term "reasonableness," one court indicated, "The reasonableness standard contemplates and permits a flexible set of escalating police responses, provided only that they remain reasonably related in scope and intensity to the information the officer initially has, and to the information he gathers as his encounter with the citizen unfolds. The greater the specific and articulable indications of criminal activity, the greater may be the officer's intrusion upon the citizen's liberty" People v Finlayson, 76 AD2d 670, 675 (2d Dept. 1980)

<sup>5</sup> The Fourth Amendment to the US Constitution reads that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." Other applicable law includes the Civil Rights Act of 1964, which requires that all "persons within the jurisdiction of the United States shall have the same right in every State and Territory to...the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens," and any person who is deprived of "any rights, privileges, or immunities secured by the Constitution and laws, shall have a cause of action."

To assist in determining whether the basis for each stop, question and frisk conducted by NYPD officers is appropriate, the Department requires that for each stop, question and frisk, the officer complete a “Stop, Question and Frisk Worksheet” (PD344-151A, also known as UF-250 forms), a copy of which is attached as Exhibit B. In addition to other information, the worksheet requires that the officer indicate the circumstances leading to the stop, by checking off various boxes on the sheet, as well as whether the person was frisked, and if so, whether a weapon was found.

Over the years, questions and concerns have been raised about the stop, question and frisk policies of the NYPD, and whether NYPD officers engage in racial profiling. These concerns came to a head with the shooting of Amadou Diallo by the NYPD’s Street Crime Unit (SCU) in February of 1999. Among other things, the death of Amadou Diallo led to the disbanding of the SCU, an investigation of the NYPD’s stop, question and frisk policies by the New York State Attorney General, and a review of civilian complaints regarding stop, question and frisks by the Civilian Complaint Review Board (CCRB).

## **II. March 2001: Civilian Complaint Review Board (CCRB) Study of Street Stops**

In a study released in March 2001 by the CCRB of complaints they received related to street stops between January 1, 1997 and March 31, 1999, a total of 1,346 complaints, the following conclusions were reached:

- African-Americans filed more than twice as many complaints about street stops as Latinos and nearly six times the number whites filed. Compared with all other CCRB complaints filed during the same period and with 1990 New York City census data, African-Americans were over-represented in this sample of street-stop complaints while whites were underrepresented.
- Men filed 80 percent of the complaints about street stops.

- Officers based two-thirds of the stops that led to complaints on observing something that appeared suspicious, not on visible criminal activity.
- The racial breakdown of officers involved in complaints about street stops mirrors the racial composition of the Police Department: most of the officers were white, a small minority was Latino, and a slightly smaller number were African-American.
- Compared with whites who filed complaints with the CCRB, African-Americans more often filed complaints about stops that involved the use of physical force.
- Most of the street stops that led to complaints were based on the officers' own observations and not on third party information. Whites were more often stopped for being in a "high-crime" area while African-Americans and Latinos who filed complaints were more often stopped after the officer(s) noticed a bulge or saw the person shift his or her waistband.
- Compared with all complaints about police-civilian encounters, the CCRB is more likely to substantiate complaints stemming from street stops and the Police Department is more likely to impose discipline as a result of these substantial complaints.
- UF-250 Forms were missing from many of the case files reviewed by the CCRB.

Based upon the aforementioned findings, the CCRB issued the following recommendations regarding street stops:

- Police should spend more time observing civilians before stopping them.
- The NYPD should review its "stop and frisk" training.
- UF-250 forms should be fully completed.
- UF-250 forms should be computerized.
- The police should issue "stop receipts," which contain information about the time and place of the encounter, the names of the officers and civilians involved, and a brief explanation of why the officer made the stop.
- Police officers should offer civilians a reason for the stop.

### **III. December 1999: Findings of Attorney General on Department's Stop, Question and Frisk Policies**

The New York State Office of the Attorney General's (OAG) December 1999 study entitled, "The New York City Police Department's 'Stop & Frisk' Practices," sets forth the frequency of "stops" in different police precincts within the New York City Police Department (NYPD) and compares the rates at which members of different racial groups were "stopped." It also assesses the sufficiency of efforts by police officers to document their reasons for "stopping" civilians. The study covers approximately 175,000 "stop and frisk" UF-250 forms on stops that occurred in 1998 and the first three months of 1999. The study found: <sup>6</sup>

- *Crime rates alone do not explain the heightened "stop" rates in the mostly minority precincts nor do they explain low stop rates in white precincts:* Precincts with the highest stop rates (mostly minority precincts) had stop rates in excess of what would be predicted simply based upon their crime rates. In contrast, precincts with the lowest stop rates (mostly white precincts) had stop rates far below what would be predicted based upon their crime rates.
- *Significant disparities emerged across all precincts and crime categories when comparing stop/arrest ratios for blacks to stop/arrest rates for whites, and the same ratios for Hispanics and whites:*
  - After accounting for the effect of differing crime rates, blacks are stopped 23% more often than whites, across all crime categories; Hispanics were stopped 39% more often than whites across crime categories.
- *Minorities are stopped at a higher rate than whites relative to their respective percentages within the population of New York City and in precincts where the majority of the population is white:*
  - In precincts in which blacks and Hispanics each represent less than 10% of the total population, individuals identified as belonging to these racial groups accounted for more than half of the total stops. Blacks accounted for 30% of the stops.

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<sup>6</sup> The New York City Police Department's "Stop & Frisk" Practices: A Report to the People of the State of New York From the Office of the Attorney General, Eliot Spitzer, Attorney General of the State of New York, Civil Rights Bureau, December 1, 1999.

- o Blacks comprise 25.6% of the City's population, yet 50.6% of all persons stopped were black; Hispanics comprise 23.7% of the City's population yet, 33% of all stops were of Hispanics. Whites are 43.4% of the City's population, but accounted for only 12.9% of all stops.
- *The majority of stops are based on reasonable suspicion, yet a large percentage of stops are not documented properly to conclude whether the reasonable test was met:*
  - o 61.1% of all sampled UF-250 forms contained a factual basis provided by officers that, as stated, were sufficient to justify a "stop" based on "reasonable suspicion."
  - o 15.4% of all sampled UF-250 forms contained factual basis provided by officers that, as stated, were not sufficient to justify a "stop." Hence, in one out of every seven "stops" documented, the facts provided by the officers as a basis for stopping the individual did not meet the legal test of "reasonable suspicion."
  - o 23.5% of all sampled UF-250 forms did not state a sufficient factual basis to allow a reader (including a police supervisor) to determine whether the "stop" was supported by "reasonable suspicion."
- *Racial Disparities Existed in "Mandated Stops," stops involving physical force, a frisk, an arrest or the subject's refusal to provide identification, not stops overall:*
  - o Racial minorities were no more likely than whites to be subject to "stops" where the factual basis stated by a police officer did not meet the legal standard of "reasonable suspicion;" however,
  - o "Mandated Stops" showed some racial disparities: 15.4% of forms reflecting stops of black do not state a reasonable suspicion, 12.6% of forms reflecting "stops" of Hispanics do not state such a basis, and 11.3% of forms reflecting "stops" of whites do not state such a basis.

After the aforementioned report was released by the Attorney General's Office, then-Police Commissioner Howard Safir responded that the report was "critically flawed," emphasizing that the race of citizens stopped "strongly correlates" with the descriptions of suspects given by victims of violent crime. He also said that the stop and frisk forms were "administrative tools" not required to provide the legal basis for a stop.<sup>7</sup>

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<sup>7</sup> Greg B. Smith, New York Daily News, December 1, 1999

#### **IV. September 2003: Settlement of Racial Profiling Suit in Daniels, et al v. the City of New York**

A class action lawsuit, Daniels, et al v. the City of New York, alleging racial profiling in the New York City Police Department, was filed on March 8, 1999 and was recently settled on September 18, 2003.

In the lawsuit, ten young men brought a class action lawsuit seeking an injunction barring the NYPD's SCU, a plainclothes unit which was disbanded in recent years, from the alleged unconstitutional stopping and frisking of New York City residents. The plaintiffs alleged that SCU officers stopped and frisked them without the reasonable suspicion of criminal activity required by the Fourth Amendment, and that the officers selectively targeted them on the basis of their race and national origin in violation of the Equal Protection Clause of the Fourteenth Amendment.<sup>8</sup>

On September 18, 2003, the City and plaintiffs agreed to a settlement of the case. The settlement stipulation prohibits all racial profiling by the NYPD and requires that such policy comply with the United States and New York State Constitutions. Other terms of the settlement include a requirement that the NYPD audit the officers and supervisors who engage in stop and frisks to determine whether the stop and frisks are based on reasonable suspicion and whether the stops and frisks are being documented. The results of these audits are to be supplied to counsel for the plaintiffs. The City will also pay for an independent auditor to monitor compliance by conducting a quarterly review of all stop and frisks. Such oversight will continue through 2007. Additionally, the settlement requires annual in-service training for members of the force on the Department's racial profiling policy and public information and outreach to inform

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<sup>8</sup> Center for Constitutional Rights, [http://www.ccrny.org/v2/legal/govt\\_misconduct/govtArticle.asp?ObjID=tgIrDQ65Gb&Content=139](http://www.ccrny.org/v2/legal/govt_misconduct/govtArticle.asp?ObjID=tgIrDQ65Gb&Content=139), Accessed in February 2004.



communities about the Department's policy and citizens' rights.<sup>9</sup> Attachment C provides a comparison of the proposed legislation, current NYPD policy, and the settlement agreement.

## **V. Summary of Intro. 142**

Intro 142 creates a new chapter three to title 14 of the administrative code of the city of New York entitled "Racial or Ethnic Profiling Prohibited."

Racial or ethnic profiling is defined in the bill as the "stopping and questioning of an individual, the stopping and frisking of an individual, or the stopping of a motor vehicle, by a member of the force of the police department or other law enforcement agency, that relies on the race, ethnicity or national origin rather than the behavior of an individual or information that lead the police to a particular individual who has been identified as being, or having been, engaged in criminal activity." "Law enforcement agency" is defined as "any agency funded in whole or in part by city funds and which performs a law enforcement function."

The bill's main provision states that "every member of the force of the police department or other law enforcement agency shall be prohibited from engaging in racial or ethnic profiling."

The bill then requires that the police department and other law enforcement agencies "promulgate and adopt a written policy that prohibits racial or ethnic profiling." Among other things, such written policy must include a requirement that the "police department educate cadets in the Police Academy about racial profiling and require all

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<sup>9</sup> Center for Constitutional Rights, [http://www.ccr-ny.org/v2/legal/govt\\_misconduct/govtArticle.asp?ObjID=tgIrDQ65Gb&Content=139](http://www.ccr-ny.org/v2/legal/govt_misconduct/govtArticle.asp?ObjID=tgIrDQ65Gb&Content=139), Accessed in February 2004.

members of the NYPD to attend a seminar about racial profiling every year, and that requires other law enforcement agencies to educate cadets about racial profiling and that requires members to attend a seminar about racial profiling every year.”

The bill then mandates that the police department and other law enforcement agencies use a form, to be developed in consultation with the CCRB, that records:

- The number of persons stopped for traffic violations and the number of persons patted down, frisked and searched;
- The characteristics of race, color, ethnicity, gender and age of each such person, provided the identification of such characteristics shall be based on the observation and perception of the officer responsible for reporting the stop and the information shall not be required to be provided by the person stopped;
- If a vehicle was stopped, the number of individuals in the stopped motor vehicle;
- Whether immigration status was questioned, immigration documents requested, and if any further inquiry was made to the immigration and naturalization service with respect to any person stopped or in the motor vehicle;
- The basis for the conduct that resulted in the individual being stopped and frisked or searched, the alleged violation, if any, that resulted in the individual being stopped, or nature of the alleged traffic violation that resulted in the stop;
- Whether a search was conducted and, if so, the result of the search;
- If a search was conducted, whether the search was of a person or the person’s property, and whether the search was conducted pursuant to consent and if not, the basis for conducting the search including any alleged criminal behavior that justified the search;
- Whether a warning or citation was issued;
- Whether an arrest was made and for what charge;
- The approximate duration of the stop; and
- The time and location of the stop.

The bill then requires the police department and other law enforcement agencies to compile the information indicated above into a report to the CCRB, City Council, borough presidents and community boards. The bill further requires the CCRB, in consultation with the police department and other law enforcement agencies, to develop a form to record the information required by the bill.

Finally, the bill lists the discipline action that may be meted out by the police commissioner and the heads of other law enforcement agencies if it is determined, after an investigation, that an officer has engaged in racial profiling. Such punishment includes:

- Discharging the officer from the force;
- Suspending the officer from the force for a period of time, such time to be determined by the commissioner or head of the law enforcement agency;
- Requiring the offending officer to attend educational seminars regarding racial profiling and police-community relations;
- Requiring the offending officer to participate in appropriate community service; and
- Reducing the annual leave of the offending officer.

If this bill becomes a local law, it shall take effect 60 days after its enactment; provided, however, that upon enactment, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the local law is authorized and directed to be made and completed on or before the effective date.